

Chapter 4: Section 4(f) *De Minimis* Impacts Finding

This chapter identifies Section 4(f) resources that encompass or are adjacent to the Build Alternative. This chapter also discusses coordination with agencies having jurisdiction over these resources and efforts to avoid and minimize harm to these resources. Potential project-related impacts are evaluated as well.

4.1 INTRODUCTION

Section 4(f) of the Department of Transportation Act of 1966, codified in federal law at 49 USC 303, declares that “it is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.”

Section 4(f) specifies that the Secretary of Transportation may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or land of a historic site of national, state, or local significance (as determined by the federal, state, or local officials having jurisdiction over the park, area, refuge, or site) only if the following are true:

- There is no prudent and feasible alternative to using that land.
- The program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

The intent of Section 4(f) is to preserve and protect these resources. Incorporating a 4(f) resource into a transportation facility is therefore considered a direct use that requires the preparation of a detailed Section 4(f) evaluation. This evaluation must comply with Federal Highway Administration (FHWA) guidance; see <http://www.environment.fhwa.dot.gov/projdev/4feval.asp> for FHWA 4(f) evaluation guidance.

Section 4(f) further requires consultation with the Department of the Interior and, as appropriate, the involved offices of the Departments of Agriculture and Housing and Urban Development when developing transportation projects and programs that use lands protected by Section 4(f). If historic sites are involved, coordination with the State Historic Preservation officer is also needed.

The uses as defined in 23 Code of Federal Regulations (CFR) 774.17, are described as follows:

- Use occurs when the following are true:
 - The property is permanently incorporated into a transportation facility.
 - There is a temporary occupancy of land that is adverse in terms of the statute’s preservationist purposes as determined by the criteria in paragraph (p)(7) of this section.
 - There is a constructive use of land.

4.2 SAFETEA-LU AND DE MINIMIS

Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)—passed into law on August 10, 2005 (along with associated FHWA guidance)—allows for a simplified approval of projects that only have a *de minimis* impact on Section 4(f) resources. FHWA is authorized to approve projects that use Section 4(f) lands if FHWA, with the concurrence of the officials with jurisdiction, finds that such uses would have a *de minimis* impact upon the Section 4(f) resource. Under these conditions, FHWA can make a *de minimis* impact finding, and the preparation of a detailed analysis of avoidance alternatives is not required.

Parks, Recreation Areas, and Wildlife and Waterfowl Refuges

As quoted in 23 CFR 774.5 (b)(2), the impacts of a transportation project on a park or recreation area may be determined to be *de minimis* if the following coordination is undertaken:

- Public notice and an opportunity for public review and comment concerning the effects on the protected activities, features, or attributes of the property must be provided. This requirement can be satisfied in conjunction with other public involvement procedures, such as a comment period provided on a NEPA document.
- [FHWA] shall inform the official(s) with jurisdiction of its intent to make a *de minimis* impact finding. Following an opportunity for public review and comment as described in paragraph (b)(2)(i) of this section, the official(s) with jurisdiction over the Section 4(f) resource must concur in writing that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection. This concurrence may be combined with other comments on the project provided by the official(s).

Historic Properties

As quoted in 23 CFR 774.5 (b)(1), the impacts of a transportation project on a historic property may be determined to be *de minimis* if the following coordination is undertaken:

- The consulting parties identified in accordance with 36 CFR part 800 must be consulted; and
- [FHWA] must receive written concurrence from the pertinent State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), and from the Advisory Council on Historic Preservation (ACHP) if participating in the consultation process, in a finding of “no adverse effect” or “no historic properties affected” in accordance with 36 CFR part 800. [FHWA] shall inform these officials of its intent to make a *de minimis* impact determination based on their concurrence in the finding of “no adverse effect” or “no historic properties affected.”
- Public notice and comment, beyond that required by 36 CFR part 800, is not required.

4.3 DESCRIPTION OF BUILD ALTERNATIVE

The limits of this project extend from mile post (MP) 59.8 in Escalante to MP 86.3 in Boulder along SR-12. This project proposes to provide the Utah Department of Transportation (UDOT) with the right-of-way necessary to maintain the road, address deteriorating roadway facilities, improve safety, and accommodate a wide variety of corridor users.

4.3.1 Purpose and Need

The purpose of the project is to do the following:

- Provide adequate space for UDOT to perform ongoing maintenance operations on the roadway and supporting infrastructure
- Improve safety and infrastructure where the roadway facilities are deficient or deteriorating
- Accommodate the wide range of corridor users

See Chapter 1 for a detailed discussion of the project's purpose and need.

4.3.2 Alternatives

No-Build Alternative

The No-Build Alternative provides a baseline for comparison to the Build Alternative. Under the No-Build Alternative, right-of-way would remain defined by RS-2477, continuing uncertainty regarding the boundary at the "edge of disturbance." Inter-agency confusion regarding which maintenance activities are acceptable would continue. Maintenance beyond the existing toe of slope would be difficult, if not impossible. Safety would continue to be compromised by deteriorating structures, Jersey barriers, and roadway embankment as well as inadequate pavement width and intersections.

Build Alternative

The following improvements would be made under the Build Alternative:

- Obtain right-of-way from MP 68.9 to MP 83.1.
- Replace Calf Creek Bridge at MP 74.5.
- Stabilize roadway at three locations where embankment or barrier is failing:
 - MP 74.8.
 - MP 75.4.
 - MP 77.5 to 77.7.
- Provide six slow-vehicle turnouts, which are intended to allow slow-moving vehicles to pull aside and let other vehicles pass (they are not intended for parking):
 - Eastbound at MP 71.7, 76.2, and 79.5.
 - Westbound at MP 69.9, 72.5, and 83.0.
- Improve two intersections:
 - Hole-in-the-Rock Road at MP 64.4.
 - Calf Creek Recreation Area at MP 75.0.
- Widen roadway at narrow curve known as "The Tank," located at MP 71.0.
- Improve signing for bicycles, animal presence, and roadside hazards along the entire corridor. (Specific locations will be determined during design.)

See Chapter 2 for a detailed discussion of both the No-Build and Build Alternative. Figure 2.1 shows the location of the spot improvements and the right-of-way acquisition.

4.4 SECTION 4(f) RESOURCES

This section describes the Section 4(f) resources that exist within the 4(f) study area. Section 4(f) resources within the project area include recreation resources and cultural resources; there are no publicly owned wildlife or waterfowl refuges in or near the project area. The study area for recreational Section 4(f) resources is the same study area used to find the recreational resources described in Chapter 3. The study area for historical Section 4(f) resources is the same study area used to inventory the cultural resources described in Chapter 3. Parks were included in the recreation resource analysis; however, there are no parks in the study area other than the monument.

Recreation Areas

FHWA has determined that the monument is a Section 4(f) resource. The Bureau of Land Management (BLM) manages approximately 1,870,800 acres of public lands within the monument. By managing this land, BLM protects monument resources (e.g., archaeological, historical, biological, paleontological, and geologic), facilitates scientific research activities, and accommodates recreation. As shown in Figure 4.1, SR-12 intersects a small section of the total monument lands—approximately 19 miles from MP 64.3 to MP 83.1. Section 3.2.6 identifies specific recreational features within the monument.

Historic and Archaeological Properties

Section 3.14 identifies cultural resources (e.g., historic and archaeological) and their eligibility for the National Register of Historic Places (NRHP). UDOT and FHWA documented eligible properties in a determination of eligibility (DOE), and SHPO concurred with the determination on November 8, 2007. This correspondence can be found in Appendix A.

Historic properties that are on or eligible for the NRHP under Criteria A, B, or C are generally important for preservation in place and are considered Section 4(f) resources. Historic properties on or eligible for the NRHP under Criterion D—i.e., the potential to yield data—are generally not important for preservation in place and are not considered Section 4(f) resources. There are 11 sites eligible for the NRHP within the area of potential effects (APE). Nine of the sites are archaeological sites that are only eligible under Criterion D and are not important for preservation in place. Therefore these nine sites are not Section 4(f) resources and are not discussed in this chapter. The other two sites are considered Section 4(f) resources and are discussed below.

Site 42Ga6091

Site 42Ga6091 includes remnants of the historic Escalante to Boulder road constructed by the Civilian Conservation Corps (CCC) between 1934 and 1940. The site consists of 12 features, including two discontinuous and abandoned road segments, three rock retaining walls, two culverts, and six drainage ditches hand dug into sandstone. This site is eligible under Criteria A and C. Refer to Section 3.14 for a description of eligibility criteria and further details on this site.

Site 42Ga6082

Site 42Ga6082 is a prehistoric rock art site and eligible under Criteria C and D. Refer to Section 3.14 for a description of eligibility criteria and further details on this site. For the purpose of this analysis, it is assumed that this site warrants preservation in place and is a 4(f) resource.

4.5 IMPACTS

Grand Staircase-Escalante National Monument

All of the improvements included in the Build Alternative fall within the monument; intersection improvements at Hole-in-the-Rock Road straddle the monument boundary. The impacts to the monument from the Build Alternative are shown in Table 4.1. Improvements are shown in Figure 2.1. These improvements constitute the use of a Section 4(f) property because land would be permanently incorporated into a transportation facility. There is neither constructive use nor use resulting from temporary occupancy.

Table 4.1: Impacts to the Grand Staircase-Escalante National Monument

Proposed Improvement	Location	MP	Acres of Permanent Impact	Acres of Temporary Impact	No. on Figure 2.1
<u>Right-of-Way:</u> Title 23 right-of-way federal land transfer, generally for a 100' half width from centerline of existing SR-12 (200' total width), with selected areas where additional width is requested for existing roadway prism.	Corridor from Head of the Rocks to the Forest Service Boundary	68.9 – 83.1	346	N/A	1
<u>Right-of-Way:</u> Title 23 right-of-way federal land transfer for stockpile site.	Previously disturbed stockpile area on New Home Bench	82.1	5.5	N/A	1a
<u>Replace Calf Creek Bridge:</u> Construction of a new box culvert and wingwalls at the Calf Creek crossing, realignment of 300' of Calf Creek, and placement of riprap in the Creek for scour protection.	Calf Creek crossing	74.5	0.26	0.34	2
<u>Stabilize Roadway at Three Locations:</u> Rock removal or retaining wall construction to stabilize the existing roadway and/or roadside. Rock removal will allow the roadway to be shifted to the east (away from Calf Creek Canyon), providing the width necessary to properly support the pavement section and barrier.	Rock removal at location where W-beam guardrail is currently supporting embankment	74.8	0.27	0.31	3a
	Sharp curve immediately north of Calf Creek Recreation Area where barrier is not properly supported	75.4			3b
	Option 1—Rock Removal		0.14	0.18	3b
	Option 2—Retaining Wall		0.04	0.31	3b

Proposed Improvement	Location	MP	Acres of Permanent Impact	Acres of Temporary Impact	No. on Figure 2.1
	Rock removal at location where Jersey barrier is not properly supported	77.5 – 77.7	0.60	0.67	3c
<u>Slow-Vehicle Turnouts at Six Locations:</u> Construction of 12' slow-vehicle turnouts with 4' shoulders. Turnout length will vary by location and is a function of posted speed limit and grade.	Westbound (west of Spencer Flats Road)	69.9	0.51	0.28	4a
	Eastbound (south end of the Camelbacks)	71.7	0.49	0.28	4b
	Westbound (south of Boynton Overlook Wayside)	72.5	0.55	0.28	4c
	Eastbound	76.2	0.26	0.16	4d
	Eastbound (south end of New Home Bench)	79.5	0.48	0.28	4e
	Westbound (south of Hell's Backbone Road)	83.0	0.47	0.28	4f
<u>Improve Two Intersections:</u> Construction of a 12' median, left-turn pocket, and 12' right-hand turn pocket with 4' shoulders.	Hole-in-the-Rock Road	64.4	5.22	2.46	5a
	Calf Creek Recreation Area intersection	75.0	1.9	0.55	5b
<u>Widen Pavement at Narrow Curve:</u> Rock removal is required.	"The Tank"	71.0	0.31	0.49	6
<u>Improve Signing.</u>	Locations to be determined during development of signing plan		Negligible		N/A
Total Right-of-Way Transfer:			351.5		
Total Construction Impacts:			11.46	6.56	
Project Total:			362.96	6.56	

The approximate impacted area within the monument would include the following:

- 351.5 acres federal land transfer (right-of-way)
- 11.5 acres permanently impacted (roadway widening)
- 6.6 acres temporarily impacted by construction activities

The monument encompasses approximately 1,870,800 acres. The Build Alternative would impact approximately 363 acres—roughly 0.02 percent of the monument. Of these 363 acres, 351.5 acres would involve land transfer without surface disturbance. Approximately 11.5 acres—less than 0.0006 percent of the monument—would be permanently disturbed, and 6.6 acres would be temporarily disturbed by construction activities. The project would not adversely affect historical, biological, paleontological, and geologic resources; would not negatively impact the ability to facilitate scientific research activities; and would accommodate recreation within the monument.

The proposed improvements are located primarily on open land; no public facilities, gathering spaces, trailheads, or wilderness study areas (WSAs) would be impacted, with the exception of the relocation of Hole-in-the-Rock Wayside and the improved accessibility to Hole-in-the-Rock Road and Calf Creek Recreation Area. Intersection improvements at Hole-in-the-Rock Road would impact the current location of the Hole-in-the-Rock Wayside; however, BLM intends to move this wayside to another location in conjunction with the intersection improvements. By relocating the wayside to the west, conflicts between vehicles turning into the wayside and vehicles turning onto Hole-in-the-Rock Road would be reduced. Intersection improvements would improve accessibility to Hole-in-the-Rock Road and the Calf Creek Recreation Area. Figures 2.14 and 2.15 show the proposed improvements at these two locations.

Site 42Ga6091

The Build Alternative at MP 77.5 to 77.7 consists of widening the roadway to the east side, which would provide adequate support for a barrier on the west side of the road. This would be accomplished by removing rock through blasting and ripping with heavy equipment. The six hand-dug drainage features included in Site 42Ga6091 are on the east side of the road. Four of the six ditch sections would be impacted. Approximately 60 feet of the ditch would be removed along with the surrounding rock.

The Section 106 process resulted in a finding of “no adverse effect” for Site 42Ga6091, as documented in the finding of effect (FOE). It was determined that the impact to the site as a whole would be minimal and would not alter the characteristics that qualify the property for the NRHP. SHPO concurred with the findings on November 8, 2007. This correspondence, dated October 4, 2007, is included in Appendix A.

Site 42Ga6082

The Build Alternative will not impact this site. SHPO concurred with a finding of “no effect” for Site 42Ga6082 on November 8, 2007. This correspondence, dated October 4, 2007, is included in Appendix A.

4.6 AVOIDANCE, MINIMIZATION, AND MITIGATION OR ENHANCEMENT MEASURES

Avoidance, minimization, and mitigation or enhancement measures have been considered in development of the Build Alternative.

Grand Staircase-Escalante National Monument

The proposed improvements, with the exception of slow-vehicle turnouts, are at spot locations where deficiencies have been identified. The proposed slow-vehicle turnouts have been located to avoid trailheads and WSAs and to minimize impacts (e.g., extensive earthwork).

Minimization has also been incorporated where practicable. The requested 200-foot wide right-of-way corridor is the minimum right-of-way that UDOT needs to maintain this facility. The proposed typical section for spot improvements includes four-foot shoulders, which is the minimum desirable width for safety and maintenance. Slow-vehicle turnouts are proposed instead of full length passing lanes to minimize the length.

The Build Alternative would result in improved safety and an enhanced visual experience for monument users. Proposed mitigation measures include aesthetic barrier treatments in areas where existing concrete Jersey barriers would be replaced.

Historic Property—Site 42Ga6091

Complete avoidance of Site 42Ga6091 is not possible under the Build Alternative. Features of this site fall on both sides of the highway at a location where the existing barrier is not adequately supported. Barrier stabilization requires additional roadway width. Hand-dug drainage ditches are directly across the road from a basalt cobble retaining wall; the retaining wall is directly under the existing barrier. It is necessary to impact either the hand-dug ditches or cobble wall to stabilize the barrier.

Initially, two options were considered at this location: 1) widening to the east with rock removal or 2) widening to the west with the construction of a new retaining wall. The impacts for both are summarized below.

Table 4. 2: Comparison of Impacts to Site 42Ga6091 for Stabilization Options

Option 1—Rock Removal	Option 2—New Retaining Wall
<p>Four of six hand-dug drainage ditches would be partially removed with the surrounding rock:</p> <ul style="list-style-type: none"> • Feature H, 20' of 160' removed • Feature I, 15' of 120' removed • Feature J, 15' of 160' removed • Feature K, 10' of 170' removed 	<p>Complete removal of 100' long wet laid basalt cobble retaining wall would be required to construct a new retaining wall.</p>

From coordination with a National Environmental Policy Act (NEPA) and NHPA specialist from UDOT Region Four, it was concluded that constructing a new wall would have a greater impact to Site 42Ga6091 than rock removal. For this reason, in addition to the new retaining wall's greater visual impacts and long-term maintenance requirements, the rock removal option was selected for inclusion in the Build Alternative.

4.7 COORDINATION

Grand Staircase-Escalante National Monument

BLM is a cooperating agency for this environmental assessment (EA); coordination has been ongoing and will continue throughout construction. The Build Alternative has been developed in consultation with BLM. Several meetings with BLM were held to discuss the requested right-of-way and the proposed spot improvements. On October 30, 2007, UDOT sent a letter to BLM requesting their concurrence that a Section 4(f) *de minimis* impact finding is appropriate for the monument resources affected by this project; BLM concurred on November 6, 2007. This correspondence is included in Appendix A.

The public has been afforded an opportunity to review and comment on this project, including its effects on the monument property. Public input regarding the project has been solicited through public meetings, a project website, presentations to the Boulder Town Council and Escalante City Council, media outreach, and a context sensitive committee. See Chapter 6 for a detailed discussion of public participation. Additionally, public comments received during the review and comment period of this EA will be taken into consideration.

Historic Property—Site 42Ga6091

A programmatic agreement between FHWA, ACHP, SHPO, and UDOT was reached in June 2007, regarding Section 4(f) *de minimis* determination pursuant to SAFTEA-LU Section 6009. Under this agreement, SHPO is generally notified of FHWA's intent to make a Section 4(f) *de minimis* use finding with a programmatic letter. This letter, dated June 12, 2007, is available in Appendix A and was sent to SHPO on October 4, 2007, along with the *Final Cultural Resource Inventory Report* and the DOE/FOE.

4.8 DE MINIMIS FINDINGS**Grand Staircase-Escalante National Monument**

FHWA made a *de minimis* impact determination for the monument on November 29, 2007. This correspondence, dated November 20, 2007, is available in Appendix A.

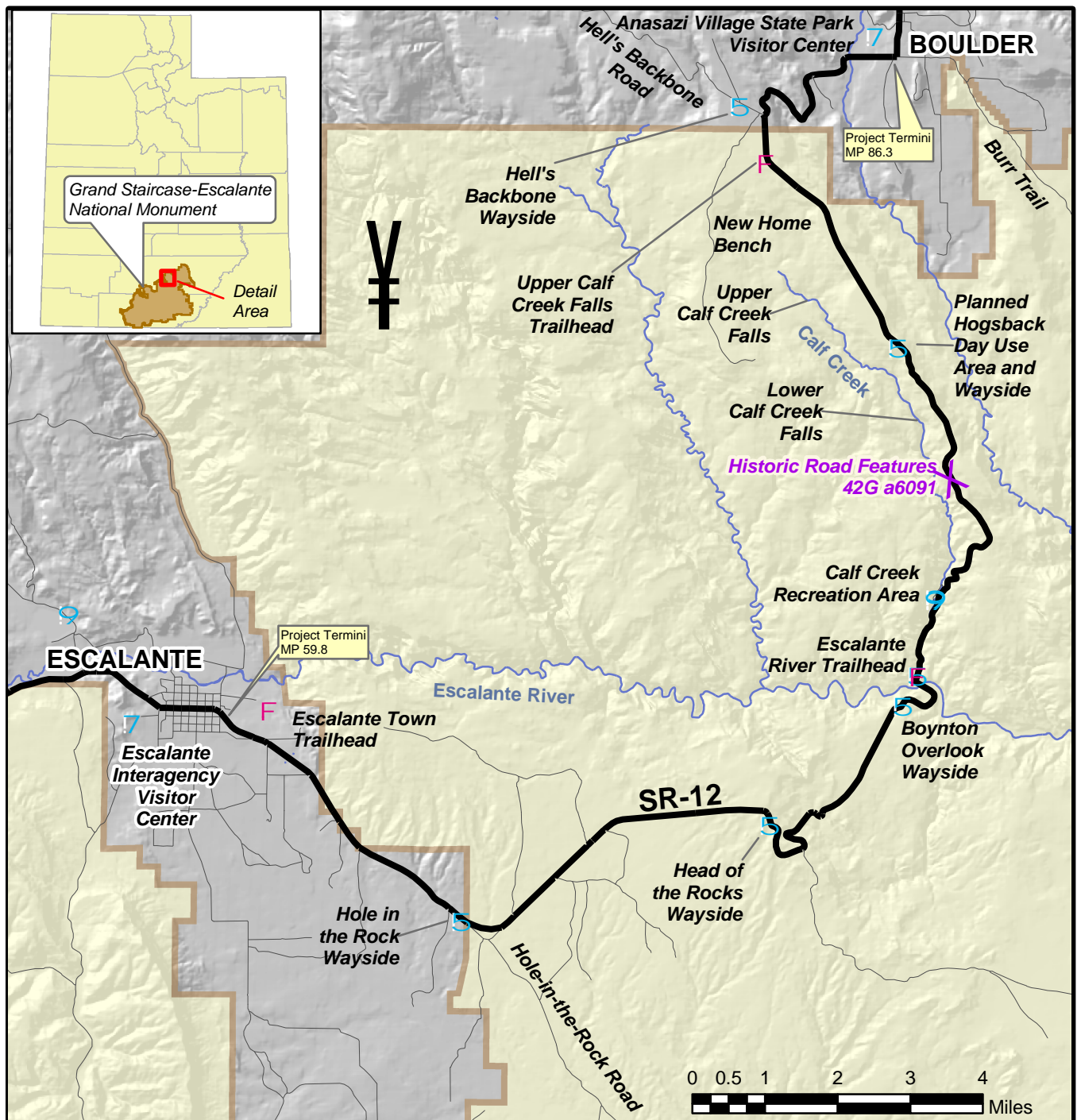
Historic Property—Site 42Ga6091

Because of the programmatic agreement between FHWA, ACHP, SHPO, and UDOT described above, a *de minimis* impact determination for Site 42Ga6091 became effective when SHPO concurred with the DOE/FOE on November 8, 2007. This correspondence, dated October 4, 2007, is included in Appendix A.

4.9 SECTION 6(f) RESOURCES

The Land and Water Conservation Fund Program provides matching grants to states and local governments for the acquisition and development of public outdoor recreation areas and facilities. Section 6(f) of the Land and Water Conservation Fund Act (16 USC Sections 460-4 through 460-11) prohibits converting these properties to a non-recreation purpose without the approval of the Department of the Interior. The Department of the Interior must ensure that replacement lands of equal value are provided as conditions to such conversions. Consequently, where such conversions of Section 6(f) lands are proposed, replacement lands must be provided.

There are nine properties within the Grand Staircase-Escalante National Monument that were purchased with Section 6(f) Land and Water Conservation Funds. However, none of these properties are adjacent to the SR-12 project corridor between Escalante and Boulder. Six are entirely within Kane County, and the other three, which are within Garfield County, are no closer than 12 miles away from the project corridor. All of the proposed improvements fall within the monument lands; therefore there is no potential for 6(f) properties to be impacted.



SECTION 4(f) RESOURCES

Section 4(f) Resources

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| | Grand Staircase-Escalante National Monument | | State Route 12 |
| | Waysides | | Local Roads |
| | Recreation Areas / Campgrounds | | Stream |
| | Trailheads | | |
| | Historic CCC Road Features | | |

*Sources: AGRC (2002), BLM Grand Staircase-Escalante National Monument (2006), and Garfield County (2003)